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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/06/2000

David Allison Bennett

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KHORSANDI PATENT LAW GROUP, A.L.C.

140 S. LAKE., SUITE 312

PASADENA, CA 91101-4710

EXAMINER

PLUCINSKI, JAMISUE A

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3629

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/684,869	Applicant(s) BENNETT ET AL.	
	Examiner JAMISUE A. PLUCINSKI	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 64-79 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 64-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20080414</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 64-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kara et al.(6,233,568) in view of InterShipper (Newsbytes Article, Internet Update).

4. With respect to Claim 64: Kara discloses the use of a shipping management computer system (see abstract) for:

- a. Receiving information from a user such as a set of package specifications (Figure 8, Box 802) and shipping information (See Figure 8);
- b. Determining multiple shipping rates (first and second) for a first carrier (Figure 8, Boxes 807 and 808);

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- c. Determining multiple shipping rates (third and fourth) for a second carrier (Figure 8, Boxes 807 and 808);
 - d. Receiving a request from a user to ship a package using one of the services by one of the carriers (See Figure 8, Column 5, lines 56-67);
 - e. Facilitating the delivery of the package (Column 6, lines 1-6).
5. Kara discloses receiving information from the user, but fails to disclose the information is the shipping date. However, the specific type of information that is received is deemed to be nonfunctional descriptive material and is not functionally involved in the steps recited. The determining, displaying, facilitating and receiving steps would be performed the same regardless of what type of information is being received. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
6. Kara disclose the use of calculating and displaying rates for specific services, for multiple carriers, but fails to disclose the simultaneous display of rates for each carrier that includes rates of different services (Column 11, lines 1-13). Intershipper is an internet, online website, where internet users can enter origin, destination, package weight and dimensions and will be displayed every method possible that you can use to ship your package for all major shippers (See Internet Update Article Page 1, Paragraphs 1-3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Nicholls and Kara to display every method possible to ship a package, as disclosed by InterShipper, in order to find the cheapest shipping rate (See Page 1).
7. With respect to Claims 65-67: See Figure 8, Box 807 and 808.

8. Claims 68-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kara and InterShipper as applied to claim 64 above, and further in view of UPS® On Call Air Pickup (www.apps.ups.com), UPS® Service Guide (www.ups.com) and FedEx® Services (www.fedex.com) and Barnett et al. (6,369,840).

9. With respect to Claims 68-79: Kara discloses the use of a shipping management computer system (see abstract) for:

- f. Receiving a set of package specifications (Figure 8, Box 802) and shipping information (Figure 8);
- g. Determining multiple shipping rates (first and second) for a first carrier (Figure 8, Boxes 807 and 808) ;
- h. Determining multiple shipping rates (third and fourth) for a second carrier (Figure 8, Boxes 807 and 808) ;
- i. Receiving a request from a user to ship a package using one of the services by one of the carriers (See Figure 8, Column 5, lines 56-67) ;
- j. Facilitating the delivery of the package (Column 6, lines 1-6).

10. Kara disclose the use of calculating and displaying rates for specific services, for multiple carriers, but fails to disclose the simultaneous display of rates for each carrier that includes rates of different services (Column 11, lines 1-13). Intershipper is an internet, online website, where internet users can enter origin, destination, package weight and dimensions and will be displayed every method possible that you can use to ship your package for all major shippers (See Internet Update Article Page 1, Paragraphs 1-3). It would have been obvious to one having ordinary skill

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in the art at the time the invention was made to modify Nicholls and Kara to display every method possible to ship a package, as disclosed by InterShipper, in order to find the cheapest shipping rate (See Page 1).

11. Kara discloses receiving shipping information, however fails to disclose the receiving the shipping date from the user. UPS discloses its on-call pick up which allows a user to schedule a pick-up with UPS, therefore receiving a shipping date, the examiner considers the day the carrier picks up the package is the shipping date, since it is out of the user's hands at that time and the shipping process is started (see Page 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kara, to have the ability to schedule a shipping date by the user, as taught by UPS. Using a known technique of a user inputting the shipping date, by scheduling a pick-up time, would have been obvious to one of ordinary skill in the art. (See KSR [127 S Ct. at 1739] "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.").

12. Kara discloses a display where the rates of each carrier are displayed adjacent to the selected services (See Figures 8A). However Kara does not specifically disclose the rates being calculated with respect to day and time, according to the shipping date. Both UPS® and FedEx® disclose specific services where they are guaranteed delivery by a certain time in the day and disclose scheduling a pick-up. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the time sensitive "urgency" services, as disclosed by FedEx® and UPS®, in order to ship thing and compete with a time advantage using guaranteed delivery times and to reduce costs, when delivery time is not of importance. (See Fed Ex Page 1). Kara, InterShipper, UPS® and FedEx® fail to disclose the use of a simultaneous display with shows the date and time of services Barnet discloses the use of a calendar which can

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be used for online purchasing of services (column 2, lines 63-67), where there is a graphical representation of date on one axis and time on another (See Figure 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the display of rates of Kara, Intershipper, UPS® and FedEx® with respect to day and time, include the day and time, as disclosed by Barnett, in order to provide a single integrated display that allows a user to order or purchase a system based on the calendar day and time (See Barnett, column 2).

Response to Arguments

13. Applicant's arguments with respect to claim 64-79 have been considered but are moot in view of the new ground(s) of rejection.

14. Claim 64 adds that the shipping date is received from the user. As stated above, in Claim 64, this limitation is considered to be non-functional. No further steps in Claim 64 use the shipping date, so it is considered to be non-functional descriptive mater. It is not till Claim 68, that the actual shipping date is used further in the steps, therefore it becomes functional in Claim 68 and rejected accordingly.

15. With respect to Applicant's argument that InterShipper does not disclose a "simultaneous display": The article states that the service will return every method possible..., and arrange the results in cost order and color code the results by approximate transit time. The examiner considers this to be a simultaneous display, due to the fact that it describes the results as being returned all at once.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMISUE A. PLUCINSKI whose telephone number is (571)272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jamisue A. Plucinski/
Primary Examiner, Art Unit 3629